

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: <b>10-C-08759-PEM</b>
	)	
<b>CHARLES JAMES SLONE,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 146307,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

Respondent Charles James Slone (respondent) was convicted of violating Penal Code section 148, subdivision (a)(1) (resisting arrest), a misdemeanor which may or may not involve moral turpitude or constitute other misconduct warranting discipline. Upon finality of the conviction, the review department issued an order referring this matter to the hearing department for a hearing and decision recommending the discipline to be imposed if the facts and circumstances surrounding the violations involved moral turpitude or other misconduct warranting discipline. Respondent failed to participate either in person or through counsel, and his default was entered. The State Bar filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>1</sup>

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source. Rule 5.345(C) makes the default procedures in rules 5.80-5.86, with certain exceptions, applicable in conviction proceedings.

an attorney's default is entered for failing to respond to the notice of hearing on conviction (NOH), and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

### **FINDINGS AND CONCLUSIONS**

Respondent was admitted to practice law in this state on June 12, 1990, and has been a member since then.

#### **Procedural Requirements Have Been Satisfied**

On August 17, 2011, the State Bar Court filed and properly served the NOH on respondent by certified mail, return receipt requested, at his membership records address. The NOH notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rules Proc. of State Bar, rule 5.345.) (The NOH was returned to the court, with a handwritten notation, "Return to Sender. Not at this address.")

Respondent failed to file a response to the NOH. Thereafter, the State Bar attempted to contact respondent by telephone at a number located by a State Bar investigator. On September 23, 2011, the State Bar called the Placer County Jail and was informed that respondent was booked on May 24, 2011, and released on June 28, 2011.

On October 4, 2011, the State Bar filed and properly served a motion for entry of respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the

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<sup>2</sup> If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rules Proc. of State Bar, rule 5.85(E)(2).)

additional steps taken to provide notice to respondent. (Rules Proc. of State Bar, rule 5.80.) The motion also notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on October 20, 2011. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent also did not seek to have his default set aside or vacated. (Rules Proc. of State Bar, rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On May 14, 2012, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since the default was entered; (2) there is one additional conviction matter pending, which is not yet final; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on June 28, 2012.

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of respondent's default, the factual allegations set forth in the State Bar's statement of facts and circumstances surrounding respondent's conviction are deemed admitted and no further proof is required to establish the truth of such facts. (Rules Proc. of State Bar, rules 5.345(C) and 5.82.) As set forth below in greater detail, respondent's conviction for resisting arrest supports the conclusion that respondent violated a statute, rule or court order that would warrant the imposition of discipline. (Rules Proc. of State Bar, rule 5.85(E)(1)(d).)

**Case Number 10-C-08759 (Conviction Matter)**

Respondent was convicted of four misdemeanor counts of violating Penal Code section 148, subdivision (a)(1) (resisting arrest), as a result of respondent's public intoxication in the middle of the night on June 19, 2009, and resistance to arrest on the street and while in jail.

Resisting arrest is a crime that may or may not involve moral turpitude or other misconduct warranting discipline, depending upon the facts and circumstances surrounding the conviction. The court finds that the facts and circumstances surrounding respondent's conviction do not involve moral turpitude but do constitute other misconduct warranting discipline. Conviction of a crime involving other misconduct warranting discipline is grounds for discipline. (*Young v. State Bar* (1990) 50 Cal.3d 1204.)

**Disbarment is Mandated under the Rules of Procedure**

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment must be recommended. In particular:

- (1) the NOH was properly served on respondent under rule 5.25;
- (2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, as the NOH was served on respondent at his membership records address by certified mail; the State Bar attempted to reach respondent by mail at his official membership records address and by telephone;
- (3) the default was properly entered under rule 5.80; and
- (4) the factual allegations in the statement of facts and circumstances surrounding respondent's conviction deemed admitted by the entry of the default, support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court must recommend his disbarment.

### **RECOMMENDATION**

#### **Disbarment**

The court recommends that respondent Charles James Slone be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

#### **California Rules of Court, Rule 9.20**

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

#### **Costs**

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

### **ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Charles James Slone, State Bar number 146307, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: September \_\_\_\_, 2012

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PAT McELROY  
Judge of the State Bar Court